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DEPT FOR EB/IPE SWILSON, AMADAMO AND WHA/BSC
DEPT PLEASE PASS TO USTR MSULLIVAN, VESPINEL AND MSANDLER
DEPT PLEASE PASS TO USPTO FOR JURBAN
USDOJ FOR CCIPS/CMERRIAM
USDOC FOR 3134/USFCS/OIO/WH/EOLSON
USDOC FOR 4332/ITA/MAC/WH/OLAC/MWARD
NSC FOR SCRONIN

SENSITIVE

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SUBJECT: SURVEY OF BRAZIL'S EFFORTS TO COMBAT PIRACY

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C) 04 Brasilia 1384, D) Brasilia 1978

¶1. (U) Introduction. Under pressure from the USG's review of trade benefits under the Generalized System of Preferences (GSP) (ref A) and in response to domestic concerns about organized crime, tax losses, and risks for consumers associated with illegitimate products, the GoB has over the last one and one-half years undertaken efforts to combat piracy. A survey of those efforts, with particular attention to copyright enforcement, follows. End
Introduction.

¶2. (U) The information provided below is not exhaustive, but provides highlights of actions taken by the GoB to combat piracy since the first extension of the GSP review in June ¶2004.

Institutional Changes

¶3. (U) National Council for Combating Piracy and other IPR Crimes (CNCP): On November 24, 2004, the GoB established an institutional foundation for combating piracy with formation of the permanent public-private sector National Council for Combating Piracy and other IPR Crimes (CNCP) (ref B). The CNCP falls under the Ministry of Justice, giving it a law enforcement emphasis, and is chaired by the Vice-Minister of Justice, an activist, career law enforcement official who has kept the CNCP and its work on high-profile. The Ministry of Justice hired an Executive Secretary and staff to direct and move forward Council initiatives on a day-to-day basis; most private sector reps give the Executive Secretary, who hailed from the music industry, high marks

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for his competence and commitment. The GoB claims the Council is a one-of-a-kind for including private sector members - three of which are directly associated with U.S. film, music and software industries.

¶4. (U) The CNCP established a roadmap for tackling piracy through a 99-point national action plan which was adopted in April, 2005. The CNCP started working on all items, but broke them down according to when they were to be completed, in the short-term (6 months), medium-term (1 year), or long-term (2 years). According to CNCP's schedule, 46 action items are due for completion by November 1; the Executive Secretary claims 11 have been completed and remains

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confident that implementation of the remaining 35 will conclude on time. The plan is lengthy, and therefore not as focused as desirable. The plan covers three broad categories of actions: enforcement; education, and economic measures.

¶5. (U) The CNCP maintains a website (<http://www.mj.gov.br/combatepirataria/default.asp>) that provides information on the Council, the national action plan, IPR events, article and news items relating to piracy, and a link for the public to provide info on pirate activity to the CNCP; a hotline has also been established for people who do not have access to a computer. The Ministry of Planning approved inclusion of the Council in the federal budget, elevating its status and facilitating the acquisition of needed resources. On August 31, 2005, the CNCP released its first semi-annual report on the country's anti-piracy efforts entitled "Brazil Against Piracy"; the CNCP Executive Secretary emphasized the importance of the report since it is the first ever produced by the GoB to document anti-piracy actions.

¶6. (U) To enhance operational effectiveness, the Receita Federal (tax and customs) has created a specialized "Division for Repression of Contraband, Embezzlement, and

Piracy" (DIREP) and as well as additional divisions regionally and 36 new operational units. Specialized units within the Federal Police and Federal Highway Police are operating informally, awaiting formal approval from the Planning Ministry. Receita Federal and Ministry of Justice now share information through the "Infoseg" system to better identify and interdict smugglers at the borders; the Federal Police has launched a new system to increase security at ports; and the CNCP has a formal protocol with the Department of Consumer Defense and Protection in the Ministry of Justice to assist in efforts to educate consumers on the risks posed by some counterfeit goods.

Law Enforcement

17. (U) The Receita Federal, Federal Police, and Federal Highway Police have undertaken a number of large scale operations, principally to crack down on piracy in the Brazil-Paraguay border area. The Cataratas I operation was conducted in the last 45 days of 2004 and yielded seizures valued at USD 5 million; Cataratas II was extended into 2005 and produced record seizures in Foz do Iguacu. Operation Leao Dourado (Golden Lion) maintained and intensified operations on the Brazil-Paraguay border. As a result of the Hydra Operation coordinated by the Federal Police, one of the largest smuggling rings in Brazil was dismantled; more than 750 law enforcement agents were involved and 60 people, including federal, highway, and military police officers, were arrested. (Note. The Federal Police do not maintain a database with copyright enforcement statistics.)

18. (U) According to the Association for the Protection of Phonographic Intellectual Rights, almost 11.5 million virgin CDs and DVDs and 2.9 million recorded CDs and DVDs were seized in law enforcement operations in Brazil between January and July 2005. Figures for the year are expected to top those for 2004 in which 17.5 million virgin CDs were confiscated.

Receita Federal:

19. (U) In the first six months of this year, Receita Federal recorded 290 million reais (roughly USD 120.8 million) worth of pirated/counterfeit merchandise seized by its customs agents, a 45 percent increase compared to the same period in 2004. An additional 26 million reais (about USD 10.8 million) worth of goods were seized in July. Receita Federal's new specialized DIREP division carried out 607 operations during the first half of 2005. Throughout Brazil, Receita claims that almost 700 buses used to transport pirated products across the border have been seized in 2004 and 2005; hundreds have been arrested and over 7,000 fined.

110. (U) Looking specifically at results for Foz do Iguacu, Receita seizures through September were valued at more than USD 43.8 million, around a 100 percent increase over the value seized during the same months in 2004, and already a 31 percent increase over that seized in all of last year (USD 33.5 million). Receita Federal estimates that the volume of pirated goods and contraband moving through Foz do Iguacu has decreased between 60 and 70 percent since the beginning of 2004.

111. (U) Receita Federal's seizures in Foz do Iguacu specifically of media for music, films and software have continued to climb, consistent with the increase it recorded for overall merchandise seizures. In 2003, Receita confiscated 2,373,166 units of Virgin CDS/DVDS, recorded CDS/DVDs, tapes, and game cartridges of which the vast majority (2,255,048) were virgin CDs. In 2004, the total seized in Foz do Iguacu reached 3,872,277 with virgin CDs accounting for 3,517,985. Through July this year, the number of units seized totaled 4,165,443, over double the amount confiscated in the same period last year. While virgin CDs still accounted for the vast majority (4,140,454), the number of virgin DVDs seized jumped from 14,157 in 2004 to 151,457 so far this year. Receita efforts to stop entry of pirated goods at the border were enhanced through the GoB's elimination in September 2004 of the "free transit" status that had existed for CD-Rs, and their plastic cases entering Brazilian ports for Santos and Paranagua, ostensibly bound for Paraguay; free transit had been abolished for recorded CDs in 2001.

Highway Police:

112. (U) Brazil's Federal Highway Police have also seized record volumes of goods. Looking just at CDs and DVDs, 1.6 million units were seized between January and September this year, compared with 568,614 and 548,269 seized in all of 2003 and 2004, respectively.

State and Local Enforcement - Marketplaces:

¶13. (U) Although federal agencies have significantly stepped up seizures, pirated products are still readily available in local marketplaces throughout Brazil. According to the CNCP Executive Secretary, the Council's initial focus was on coordinating federal agencies in order to stem the tide of pirated products entering the country. Now that coordination at the federal level has improved, the CNCP is increasing its focus on enforcement at state and local levels. The Council has incorporated IPR crimes into the nation's Single Public Security System (SUSP) and the Secretary for National Public Security (SENASA) joined the

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CNCP in August 2005; the CNCP has charged the SENASP with mobilizing state and municipal authorities to fight piracy. Unlike federal level actions which focus mainly on gangs and large scale operations at the border, state and municipal actions focus more on the smaller producer of pirated products and at point-of-sale enforcement.

¶14. (U) The CNCP and SENASP are encouraging states to establish specialized IPR crime units within their police forces and/or tax departments; Sao Paulo and Rio de Janeiro already had such units, but have been joined by the states of Pernambuco, Rio Grande do Sul (in process), and Santa Catarina. The CNCP's goal is to establish specialized units in each state's police force, as well as establish state and local anti-piracy councils that mirror the federal-level CNCP. Only the cities of Rio de Janeiro and Porto Alegre have so far established such councils. Some cities have established specialized units/offices within their public prosecutors' office.

¶15. (U) On September 21, 2005, the CNCP and SENASP announced a National Operation for Combating Piracy, which SENASP is coordinating with state police forces. In the first four days of the operation, over 1 million pirated products were seized and more than 200 persons detained. The operations were carried out in Rio de Janeiro, Sao Paulo and Minas Gerais; they are slated to expand to an additional three states in October, and to include at least 10 states by the end of the year. The operations are focusing on producers and street vendors in local markets, including some identified by U.S. copyright representatives as of particular interest.

¶16. (U) In Sao Paulo city alone, raids conducted September 20-23 in the Galeria Page, the 25 de Marco avenue, Santa Efigenia, Santana, Voluntarios da Patria, Centro da Penha, Pinheiros, Largo 13, Sao Mateus, and Sao Miguel resulted in the seizure of around 482,000 CDs, DVDS, and tapes worth 2.2 million reais. In Rio de Janeiro, actions were taken in the camelodromo de Rua Uruguaiana (on list of well-known marketplaces), as well as areas in the North and West of the city and the Baixada Fluminense. Local police claim that due to actions, piracy in Rio's area of Niteroi has been nearly eradicated. Police actions in Rio de Janeiro between January and August resulted in the seizure of 591,931 pirated products compared to 778,838 in all of 2004. In extensive press reports, the CNCP Executive Secretary noted the importance of these raids not only in terms of removing pirated products from the streets, but also as a means of educating the public that piracy is a crime.

¶17. (U) Since February 2005, the CNCP has posted over 400 news articles on piracy, many chronicling local police actions. A sampling of info provided by the GoB and these news articles for later 2004 through 2005 reveals the following police actions at markets the private sector has identified as priorities: downtown Porto Alegre (11/3/2004) (11/18/2004), camelodromos Campinas (12/2/2004); Rua Uruguaiana - Rio de Janeiro (12/16/2004) (1/10/2005) (1/19/2005) (1/25/2005), Paje Gallery - Sao Paulo (1/6/2005); Rua Santa Efigenia - Sao Paulo (1/19/2005); Stand Center Gallery - Sao Paulo (1/27/2005) ; Victoria da Conquista - Bahia (2/16-18/2005); and Paraguay Fair (Import Fair) - Brasilia (4/12/2005)(6/7/2005) (10/14/2005). The Portuguese language version of CNCP's August 2005 report "Brazil Against Piracy" also contains articles detailing police actions in the various states.

Arrests:

¶18. (U) Overall statistics on arrests are not available. According to ADEPI, the Motion Picture Associations' enforcement group, this year 182 people had been arrested for audiovisual piracy through July 2005, compared with 154 for the entire year of 2004.

Judiciary

¶19. (U) Although merchandise seizures and arrests are up, Brazil's judicial system remains a weak link in its efforts to confront piracy. The prosecution process is slow and uncertain; piracy cases have traditionally taken about 5

years to work their way through the system. Historically, the ratio of convictions to the numbers of police raids is less than 1%. To date, prosecutions have been few and penalties are too low to act as effective deterrents.

¶20. (U) So far this year, 10 people have been convicted for audiovisual piracy. All received a sentence including prison time plus fine, although only one is actually serving time. This year marks the first time a person convicted for piracy is serving a prison sentence. Part of the problem has been that current cases pre-date a July 2003 stiffening of penalties associated with piracy; the change was not retroactive. Under the earlier, lower penalties, Brazilian law allows the judge to commute a jail term to a fine, if for instance, the defendant is a first-time offender. For crimes committed after July 2003, piracy carries a penalty of a 2 to 4 year jail term plus a fine. (The person serving time was caught in the act while on parole.)

¶21. (U) In compliance with the CNCP's action plan, members of the Council have been engaged in a dialog with judges on the supreme court and in the federal court system to educate them on the seriousness of the crime and the need for improved adjudication of piracy cases and stiffer penalties. As part of a judicial reform initiative, the Supreme Court is planning to establish 183 new federal courts by the end of 2005; a total of 400 would be established over eight years. Congressional approval is pending for this initiative. The President of the Supreme Court justified the need for additional jurisdictions to increase the courts' effectiveness and competency in dealing with the worst crimes, listing piracy alongside drug trafficking, arms running, and money laundering. The court is also considering establishing some form of IPR expertise within the judicial system, either in the form of specialized courts or judges with specialized knowledge. The CNCP has limited authority to force changes within the Brazilian judiciary, but its Executive Secretary has expressed confidence that the conviction of Law Kin Chong (see below) and judicial reform initiatives reveal a changing mindset within the judiciary.

Law Kin Chong:

¶22. (U) This year, the notorious smuggler Law Kin Chong was sentenced to four years of partial confinement and an associate of Chong's received a four and one-half year jail-term related to their attempts to bribe the head of a Congressional Investigative Committee (CPI) on Piracy in 2004 (ref C). While the case against Chong was for bribery, not piracy, the GoB counts his conviction as a significant accomplishment and a further indication of its commitment to combat piracy; in previous run-ins with the law, Chong had always managed to work the legal system to avoid prosecution. In April 2005, the Federal Police raided three secret depots in warehouses belonging to Law Kin Chong

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seizing 25 million reais worth of merchandise. On May 17, 2005 Receita Federal levied fines of USD 23.2 million and USD 6.4 million against two firms belonging to the syndicate led by Law Kin Chong; the charges were illegal importation and false customs declarations for hundreds of thousands of CDs and DVDs.

International Cooperation

¶23. (U) In November 2004, Brazil forged an operational agreement with its Mercosul partners (Argentina, Uruguay, and Paraguay) to provide for establishment of joint/coordinated actions to fight piracy. A June 21, 2005, Presidents Lula da Silva (Brazil) and Duarte (Paraguay) signed a memorandum of understanding establishing a joint intelligence group in the border area for the purpose of combating piracy, counterfeiting, and smuggling.

¶24. (U) Brazil's law enforcement agencies have worked closely with Interpol over the last year. A Federal Police Office was seconded to Interpol's IPR Crime Unit in Lyon. Ronald Noble, General Secretary of Interpol, participated in the Regional Forum for Latin America in the International Congress to Combat Piracy that was held in early June in Rio de Janeiro. Noble met with President da Silva and Interpol is to provide technical assistance in establishing specialized units within state police forces to combat piracy. The GoB worked closely with Interpol on "Operation Jupiter - South America," a major anti-counterfeiting operation in the tri-border area of Argentina, Brazil and Paraguay, that was conducted in a collaborative effort between police, customs and industry.

¶25. (U) In July, USG-GoB bilateral law enforcement technical cooperation talks were launched (ref D). In two meetings to date, the GoB interlocutors have displayed an interest in strengthening bilateral collaboration and in exploring how

lessens learned by U.S. law enforcement agencies involved in anti-piracy work can be applied in Brazil.

Education Campaigns

¶ 26. (SBU) According to the CNCP Executive Secretary, the private sector has dropped the ball in this area. He claimed that when discussing priorities within the Council, the private sector wanted the GoB to focus on law enforcement, which it did, but the private sector had committed to taking the lead in the area of education, which it has not. No national education campaign has been launched by the CNCP, even though item 22 of its action plan calls for one. The Motion Picture Association's Steve Solot also confided to Econoff that the private sector has yet to follow through in this area.

¶ 27. (U) However, some government groups are moving forward. For instance, the National Union for Receita Federal technical staff, in cooperation with the Ministry of Justice, has launched a national campaign entitled "Original - Choose the Guarantee" for schools. Likewise Brasilia's Federation of Industries recently launched its "I Want the Original" campaign and is distributing 10,000 leaflets in schools. Public awareness has also been raised through now ubiquitous IPR events; there have been 13 major IPR seminars/events in the country during the first 9 months of the year and more locally. The week of June 8 was IPR week in Rio de Janeiro which hosted the Regional Forum for Latin America in the International Congress to Combat Piracy meeting, a separate Interpol meeting, as well as training for judges and hundreds of police and customs agents.

Legislative Initiatives

¶ 28. (SBU) Building on bills conceived by deputies of the CPI on Piracy, the CNCP's Legislation Working Group, with input from a private sector forum, has developed draft legislation which proposes a number of changes in the country's penal code and industrial property law. Most suggested changes are practical in nature, such as providing a right-holder with additional time for initiating legal proceedings; providing law enforcement agencies with the authority to seize maritime and aviation craft, in addition to buses, used to transport pirated goods; clarification of procedures for seizing and destroying goods, as well as enabling law enforcement agencies the ability to retain only samples for use in litigation; introducing differentiation in penalties between individual offenders (camelo owners) and those involved in a larger operation; holding responsible owners of media in which advertisements promote buying, renting, exporting or importing of goods produced in violation of IPR laws; incorporating penalties for software copyright violation into the penal code; and stiffening penalties if pirated goods are imported.

¶ 29. (SBU) The CNCP Executive Secretary and Foreign Ministry interlocutors have expressed concern to post that placing such a wide array of changes within one piece of legislation may hamper speedy consideration within Congress, but note that the content and form has been determined largely by private sector council members. The CNCP as a whole will debate the draft legislation October 31, with approval expected at its November meeting.

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